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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,758	06/16/2000	MASANOBU HOKASE	1241.15	4802

7590

04/22/2003

FITZPATRICK CELLA HARPER & SCINTO
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NEW YORK, NY 10112-3801

EXAMINER

MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 04/22/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/581,758

Applicant(s)

HOKASE, MASANOBU

Examiner

Michael V. Meller

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-10, 12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-10, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 9, 10, 12 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification teaches treating mastitis but it does not provide support for preventing mastitis. The mastitis is not totally eliminated which is what "preventing" requires. This is evident from applicant's own specification. The numbers only get as low as 8.6×10^4 cells/ml which is still a large number of cells. Since applicant has no support for total elimination of the mastitis the claims are not supported by the instant specification and thus are properly rejected under this section.

Claims 9, 10, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1654

The term, "dairy cow that exhibits an increased number of somatic cells in her milk" is confusing. Increased by how much ? An increase by one cell would meet this claim. Further, what is this relative to ?

Claim Rejections - 35 USC § 103

Claims 1-3, 7-10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyons, Clarkson et al., Morgan et al. or Bedford et al. in view of Edwards, Jr and CN 1135297.

Applicant argues that the references don't teach specifically treating or preventing mastitis but as noted on the record it would have been obvious to do so for the reasons of record. Applicant argues that it would not have been obvious but provides no rationale for this rebuttal. The examiner has clearly stated on the record that it would have been obvious to use such a feedstuff to treat animals suffering from mastitis since many cows develop mastitis regularly and it would have be inevitable that the farmer who feeds all of his cows with the feedstuff will also feed cows with mastitis and thus they will be treated for mastitis.

Applicant has simply provided no rationale for his rebuttal. The fact of the matter is, farmers feed their cattle with the feedstuff. The cows do routinely develop mastitis. There will be cows who have mastitis that will be fed the feedstuff and thus the mastitis will be treated. It is also noted that since there will be cows with mastitis that are being treated there will also be cows with an increased number of somatic cells in their milk.

Claims 1-3, 7-10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards, Jr in view of CN 1135297.

Applicant argues that the references don't teach specifically treating or preventing mastitis but as noted on the record it would have been obvious to do so for the reasons of record. Applicant argues that it would not have been obvious but provides no rationale for this rebuttal. The examiner has clearly stated on the record that it would have been obvious to use such a feedstuff to treat animals suffering from mastitis since many cows develop mastitis regularly and it would have be inevitable that the farmer who feeds all of his cows with the feedstuff will also feed cows with mastitis and thus they will be treated for mastitis.

Applicant has simply provided no rationale for his rebuttal. The fact of the matter is, farmers feed their cattle with the feedstuff. The cows do routinely develop mastitis. There will be cows who have mastitis that will be fed the feedstuff and thus the mastitis will be treated. It is also noted that since there will be cows with mastitis that are being treated there will also be cows with an increased number of somatic cells in their milk.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1654

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Michael V. Meller
Primary Examiner
Art Unit 1654

Application/Control Number: 09/581,758

Page 6

Art Unit: 1654

MVM

April 18, 2003